

~~DO NOT WRITE IN THESE SPACES~~ ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

FILED/ACCEPTED

FEB - 4 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)

Amendment of Service and Eligibility)
Rules for FM Broadcast Translator)
Stations)

MB Docket No. 07-172
RM-11338

To: Marlene H. Dortch, Secretary
Attn: The Commission

**REPLY COMMENTS OF URBAN RADIO LICENSES, LLC
AND ZIMMER RADIO, INC.**

Urban Radio Licenses, LLC ("Urban") and Zimmer Radio, Inc. ("ZRI") (collectively, the "Commenters") hereby respectfully submit their Reply Comments in the above-captioned proceeding.

In their comments filed on January 7, 2008, the Commenters strongly endorsed the NPRM's and the National Association of Broadcasters' proposal to permit AM stations to be rebroadcast on FM translators. Commenters urged the Commission to adopt NAB's proposed eligibility requirement¹, as a minimum, but argued that the AM 0.5 mV/m contour would be preferable. Commenters also agreed that AM "fill-ins" should be permitted to be fed by means other than off-air, such as microwave and fiber. Commenters opposed a phase-in of the proposed rule changes, instead supporting full implementation immediately. With regard to the Commission's questions about limiting the proposed rules to standalone AM's or daytimers or to otherwise limit the number of translators or eligibility for their use, Commenters offered a

¹ No portion of the 60 dBu contour of the translator may extend beyond the smaller of (a) a 25 mile radius from the AM transmitter site; or (b) the 2.0 mV/m contour of the AM station.

No. of Copies rec'd 014
List ABCDE

resounding “No.” Finally, Commenters opined that AM licensees should be permitted to broker time over an FM translator as a fill-in service within the AM’s 0.5 mV/m contour.²

Other commenters did not agree with Commenters on a number of key issues. Prometheus Radio Project (“Prometheus”) opposes the proposed rule in its entirety, urging that “allowing AM stations to use the FM band would stifle the fostering of new entrants such as the low power radio FM (“LPFM”) service, and runs counter to the Commission’s goals of localism and diversity.” (At 1.) Even if the Commission elects to move forward with its proposal, Prometheus urges that the Commission first ensure that new entrants are able to apply for construction permits and the Commission complete the pending LPFM rulemaking before any FM translators are permitted to rebroadcast AM outlets. (At 6.) Prometheus also urges that only standalone AM’s be eligible for new rules and that translators must be limited to station owners who do not own an FM station in the same market. (At 7.) Other commenters agree. See CBS Radio, Inc. (“CBS”) Comments at 1; National Public Radio (“NPR”) Comments at 1-3 (opposing proposed rules in their entirety). See Comments of AM Daytimers Association (“ADA”) (at 3); Comments of WIN Radio Broadcasting Corp. (“WIN”) (at 3) (proposing to limit eligibility for FM translators to daytime only, standalone AM’s.) Some commenters recommend a phased-in implementation of the new rules or a delay in their effective date until LPFM filing opportunities

² In support of their recommendation that the Commission take a favorable and aggressive position on the proposal in the rulemaking, Commenters offered the example of Station WLAY in Muscle Shoals, Alabama, which has been rebroadcast by FM translator by Special Temporary Authorization (“STA”) since last year. Such carriage has proven a tremendous success, not only for the station, but also for its community. It has allowed WLAY to bring its unique format based on locally originated music and discussion thereof to many listeners who could not receive the AM at night. This has also allowed many artists to appear on the station when they are available -- at night. Commenters attached newspaper articles lauding the expanded availability of the station’s programming and its impact on the Muscle Shoals community.

are made available. See Comments of Prometheus at 5; NPR Comments at 4; Broadcast Communications, Inc. (“BCI”) Comments at 3.

Commenters respectfully submit that those who oppose the AM on FM translator proposal or want to restrict its applicability in order to hinder its effectiveness are myopic on a number of scores. First, CBS’ argument that the Commission’s proposal would create “translators of a vastly different scale” (at 3) with power in excess of 50 kilowatts is simply incorrect. The Commission does not propose to raise permissible power of FM translators above the now allowed 250 watts. CBS’ calculation of the power necessary to serve an entire area with a 25 mile radius has nothing to do with the Commission’s eligibility standard which defines a “fill-in” as an FM translator whose 60 dBu contour does not extend beyond a twenty-five mile radius from the AM transmitter site. Thus, CBS’ parade of horrors -- translators with contours in excess of those of Class A and B stations and large interference-filled areas -- is baseless and its objection groundless.

NPR’s argument that “listeners are likely to associate the programming they receive with the FM translator” (at 3) is unfounded. The programming on the station which will be rebroadcast will be AM programming and will be identified as AM programming. The rule change is a boon to AM stations; not the secondary service on which the programming will be broadcast.

Prometheus’ objections focus on the impact of the AM on FM translator proposal on LPFM. Prometheus equates LPFM’s fate with diversity and localism, urging that any service that competes with LPFM for spectrum undercuts those two bedrock principles. (At 2-3.) But, as the National Association of Broadcasters (“NAB”) points out, “permitting AM stations to operate FM translators would further the Commission’s policy goals of promoting competition,

diversity and localism.” (At 3.) Strengthening AM will foster competition by ensuring the survival of the AM service. Small market and urban AM stations tend to be held by diverse owners because they provide entry level access to the radio business. They tend to focus on local issues. See, e.g., Commenters’ WLAY situation, where an FM translator has allowed an AM station utilizing a unique local format of music originated in the market to flourish because of nighttime carriage.

Further, Commenters do not propose an FM translator filing window to provide more translators for AM, nor does the Commission. Instead, as Prometheus acknowledges, the Commission has imposed a freeze on FM translators and limited the number of translators that can be awarded to one applicant. The Commission has also indicated that the next filing window for an aural non-tabled service will be for LPFM stations. (At 8.) Urban has used existing owned FM translators, already licensed to it, to implement the STA’s it has been granted to rebroadcast AM programming. Urban is not seeking new spectrum for its translators. Thus, neither Urban nor the other recipients of the STA’s the staff has granted are competing for spectrum with LPFM applicants or operators. Since the Commission presumably does not intend to take these licenses away, or revoke the STA’s, Prometheus’ argument that the proposed rules will remove valuable, available spectrum from LPFM interests, is not well-taken.³

Nor is there any persuasive rationale for limiting the relief proposed in the instant rulemaking to AM standalone stations. Prometheus urges that such limitations “will prevent abuse, while genuinely protecting the interests of the AM owner.” (At n. 13.) But the nighttime

³ As NAB states, “we anticipate that a substantial percentage of the translators that AM stations will operate under the proposed rule changes will probably come from the pool of licensed translators and translator construction permits already granted in given markets, especially in midsized and major markets. Under these circumstances, the impact on existing services is not expected to be significant” (At 8.)

reception problems compelling the relief here are endemic to most AM broadcasters. There is nothing abusive about rendering relief to all AM broadcasters who experience nighttime signal deficiencies. The fact that the station is part of an AM-FM combination is irrelevant, because the chances for survival of the AM and the needs of its listeners are nevertheless adversely affected. Further, FM translators are secondary services which have never been attributable for multiple ownership purposes. Therefore, there is no basis for limiting the other ownership interests of an AM operator who wishes to rebroadcast on an FM translator.

The proposed limitation to AM daytimers is similarly short-sighted. As Urban's requests for STAs demonstrate, even AM's who have nominal power at night, such as Class D's and Class C's, suffer serious drop-offs in coverage area and population served before sunrise and after sunset. In some cases, those reductions in service exceed 50% or more. These stations need relief just as much as daytimers do. Their nighttime signals are essentially useless because listeners grow tired of their constant interference and tune them out.

The parties who are skeptical about the AM on FM translator proposal also seek to hamper the implementation of the proposal by arguing that it should be phased-in, rather than have immediate effect. See, e.g., NPR Comments at 4. Commenters agree with NAB that such an approach would delay the relief that this docket underlines is necessary now. There are no substantial "questions surrounding the NPRM" (at 4) that warrant a gradual approach. A phased-in approach would inevitably deny the benefits of the proposed rule to those parties not in the "priority" group for years, as the Commission becomes bogged down in definitional and engineering issues with respect to different categories of AM stations.

Moreover, Commenters are concerned that a phased-in system would jeopardize the status of those AM operators who have received STA's to rebroadcast on FM translators. While

the NPRM recognized that the staff has granted STA's and sanctioned continuance of such grants on a case-by-case basis, the Commission was not specific about what would happen to these operators upon adoption of the proposed FM translator rules. Commenters urge the Commission, if a phased-in system is used, to give priority status to the holders of STA's based on considerations of equity and efficiency, regardless of their class or status. While they built at their own risk, Commenters should be rewarded, not punished, for their energy and dedication to their listeners' needs.

Commenters agree with the parties who urge the Commission to allow a de minimis portion of an FM translator's 60 dBu contour to extend outside the AM station's 2.0 mV/m contour. See, e.g., Comments of BCI at 5. This margin is justified by the irregular shape of an AM station's contours and the difficulty of inserting an FM translator's coverage area into them. Commenters also support OneCom, Inc., whose Comments propose that the FM translator's 60 dBu contour not exceed the greater of the 25 mile radius of the AM transmitter site or the 2.0 mV/m contour of the AM station. As noted in their Comments though, Commenters would go farther. They would permit carriage of AM signals on FM translators out to the 0.5 mV/m contour, as opposed to the 2.0 mV/m contour. Commenters submit that the protected primary service contour for AM stations is the analogue for the 1.0 mV/m contour which serves as the standard for permissible FM fill-in translators.

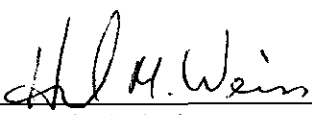
Commenters also agree that AM stations should be allowed to enter into time brokerage agreements with FM translator licensees, in order to provide as much flexibility as possible in AM/FM translator rebroadcasts. Such arrangements might provide the necessary financial stability to ensure that the rebroadcasts can continue on a permanent, regular basis.

Commenters do not support proposals to impose programming or other restrictions on AM operators rebroadcasting on FM translators. See, e.g., Comments of the AM Daytimers Association (“AMDA”) at 2-3. A requirement that such operators must commit to “a local program origination component for ... nighttime operations” (at 3) would place an unnecessary, unrelated burden on stations seeking to take advantage of the new rules. While it is likely that much of the AM programming broadcast at night over FM translators will be locally-originated, the government ought not to mandate such programming. This would raise First Amendment issues. It would also force expenditures by the most financially vulnerable of broadcasters. They will initially need to cut costs to survive even under the new regime until they can begin to develop an enhanced revenue base.

In sum, Commenters believe that the AM on FM translator rules should be as liberal and flexible as possible. They should be saddled with as few regulatory shackles and unrelated affirmative obligations as possible. Only in this way will this creative address to AMs’ signal problems achieve its optimal effect.

Respectfully submitted,

URBAN BROADCAST LICENSES, LLC
AND ZIMMER RADIO, INC.

By: 
Howard M. Weiss
Fletcher, Heald & Hildreth PLC
1300 N. 17th Street, 11th Floor
Arlington, Virginia 22209-3801
(703) 812-0400

Date: February 4, 2008

Their Counsel

CERTIFICATE OF SERVICE

I, Evelyn Thompson, a secretary at Fletcher, Heald & Hildreth PLC, hereby certify that a true and correct copy of the foregoing "Reply Comments of Urban Radio Licenses, LLC and Zimmer Radio, Inc." was sent on this 4th day of February, 2008, via First-Class United States mail, postage pre-paid, or as otherwise specified, to the following:

Chairman Kevin J. Martin**
Federal Communications Commission
445 12th Street, S.W. - Room 8-B201
Washington, D.C. 20554

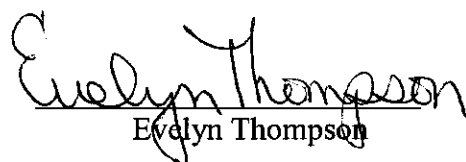
Commissioner Michael J. Copps**
Federal Communications Commission
445 12th Street, S.W. - Room 8-B115
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein**
Federal Communications Commission
445 12th Street, S.W. - Room 8-B201
Washington, D.C. 20554

Commissioner Deborah Taylor Tate**
Federal Communications Commission
445 12th Street, S.W. - Room 8-A204
Washington, D.C. 20554

Commissioner Robert M. McDowell**
Federal Communications Commission
445 12th Street, S.W. - Room 8-C302
Washington, D.C. 20554

**Denotes Hand-Delivery


Evelyn Thompson